

Office of Legislative Liaison Routing Slip

TO:	ACTION	INFO
1. D/OLL		X
3. DD/OLL		X
3. Admin Officer		
4. Liaison		X
5. Legislation		X
6.		
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9.		
10.		
SUSPENSE		Date

Action Officer:
Remarks:

SA 14/Sept 84
Name/Date

TRANSMITTAL SLIP		DATE 12 SEP 1984	
TO: OLL w/o Atts			
ROOM NO. 7D45	BUILDING Hq		
REMARKS:			
FROM: OL/PD			
ROOM NO. 3023	BUILDING	EXTENSION	

FORM NO. 241 REPLACES FORM 36-8 (A7)

STAT

Central Intelligence Agency



Washington, D.C. 20505

12 SEP 1984

LEGISLATIVE LIAISON

84-3632

"Bidy/Ground"

Seymour Efros, Esquire
Associate General Counsel
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Efros:

Re: Procurement Document: 84A-291
Issuing Activity: Central Intelligence Agency
Contract Number:
Your Reference Number: B-215638.2

I am writing in response to your letter of 14 August 1984 to the Director of Central Intelligence, advising him that a bid protest has been filed by Haworth, Inc., concerning the award of a contract for systems furniture to American Seating Company. This report will describe the factual situation on which the bid protest is founded and the Agency's position on the issues raised. Enclosed also are additional documents concerning the contract evaluation process, documents which have not been furnished to Haworth, Inc. due to the representations of American Seating Company that this information is proprietary, and the prohibitions at DAR 3.508-4(c) and FAR 15.1002(b). The latter section, for example, states that "debriefings shall not reveal the relative merits or technical standing of competitors on the evaluation scoring...."

The bid protest filed by Haworth, Inc., on 10 August 1984 (B-215638.2), raises three issues. As stated by Haworth in the protest, those issues are:

(1) Relative merits of the technical proposals. "For the award to be made to American Seating, the technical merits of their product must have been so decisively superior to Haworth's that the resultant weighing factors made up for the 9.75% price differential. We maintain that such results and conclusions are not supportable by and inconsistent with national buying trends and that General Services Administration (GSA) test data will bear at (sic) this claim."

OL 12135-84

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(2) Qualifications of CIA technical personnel. "Allied Maintenance has never installed, moved, or otherwise worked with the Haworth product line and we question their qualifications to render meaningful 'logistical input' to CIA in matters relating to our product lines."

(3) Disclosure of evaluation scoring during debriefing. "[W]e...protest the total secrecy in which the evaluation scores are being kept. CIA refuses to give us our own scores, not to mention the scores of the awardee."

Contrary to Haworth's assertions, CIA officials acted appropriately in all circumstances, and the grounds upon which the protest is based are without foundation.

RELATIVE MERITS OF THE TECHNICAL PROPOSALS: The first issue raised by Haworth concerns the evaluation performed by CIA procurement officials. Simply stated, Haworth officials believe that the American Seating products could not possibly be superior to their own. As the enclosed documents will demonstrate, the evaluation process was conducted in a fair and reasonable manner, and Haworth's claim is unfounded. The evaluation results are clearly shown to have a rational basis.

The general rule in such matters is given in Neshaminy Valley Information Processing, Inc., B-201336, July 20, 1981, 81-2 CPD 52. There, the Comptroller General stated:

[W]e have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and such discretion must not be disturbed unless shown to be arbitrary or in violation of the procurement statutes and regulations. Industrial Technological Associates, Inc., B-194398.1, July 23, 1979, 79-2 CPD 47. Thus our Office will not substitute its judgment for that of the procuring agency by making an independent determination. John M. Cockerham & Associates, Inc.; Decision Planning Corporation, B-193124, March 14, 1979, 79-1 CPD 180.

If Haworth is requesting a new evaluation or an independent investigation of the total evaluation process, we believe they

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misunderstand the purpose and scope of a bid protest. As explained in Houston Films, Inc. (Reconsideration), B-184402, June 16, 1976, 76-1 CPD 380:

It appears that HFI misunderstands both the scope of this Office's function under our Bid Protest Procedures and precisely what we did in reviewing this protest initially. When a bid protest is filed with this Office, we do not undertake full-scale independent investigations. Rather, as is clearly spelled out in the Bid Protest Procedures, see 4 C.F.R. Part 20 (1976), we review agency actions on the basis of a written record, which consists primarily of submissions from the protester, the agency, and other interested parties. In reviewing this record, we do not evaluate proposals, which is a function vested solely in the procuring agency. We also do not generally impose standards with respect to the selection of evaluation criteria and their relative weights, since that is primarily for the determination of the agency, which is in the best position to adjudge its needs. We do, however, consider the agency's evaluation was fair and reasonable and consistent with the stated evaluation criteria. The fact that an offeror disagrees with the evaluation of its proposal does not mean that the evaluation was unreasonable. What must be shown, as part of the written record, is that there is no reasonable basis for the agency's evaluation.

The same point is reaffirmed in Julie Research Laboratories, Inc., 55 Comp. Gen. 374 (1975), 75-2 CPD 232:

At the outset, it is important to note our Office has never taken the position that we will substitute our judgment for the agency's--by conducting technical evaluations of proposals and rendering determinations as to their acceptability--simply because a protest against the technical evaluation has been filed. On the contrary, our decisions have repeatedly emphasized that these functions are primarily the responsibility of the contracting agency, whose judgment will not be disturbed by our Office unless clearly shown to be without a reasonable basis. See, Comp. Gen. 60 (1972); 52 id. 382; 385 (1972).

In this light, the question before us is not whether JRD's proposals are technically acceptable. Rather, the issue is whether, upon review of the record, the Army's

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actions in conducting the technical evaluation...have been clearly shown to be without a reasonable basis.

One of the more comprehensive discussions of this issue is found in Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458. There, it is explained that the contracting agency has broad discretion in its evaluation of proposals, and that the agency's decision will be overturned only in cases where there is no rational basis for it. Concerning agency discretion in such matters, the Comptroller General stated:

In reviewing a contracting agency's determinations and considering whether they are shown to lack any reasonable basis, we have observed that given the range of judgment and discretion entrusted to responsible agency officials in the evaluation and selection process, the agency's determinations are entitled to "great weight." Olin Corporation, Energy Systems Operations, B-187311, January 27, 1977, 77-1 CPD 68, and decisions cited therein.

Although Haworth has expressed concern that American Seating's proposal was higher-priced than theirs, this fact is irrelevant since, as demonstrated by the evaluation memorandum, American Seating's proposal was technically superior. In Gloria G. Harris, B-188201, April 12, 1977, 77-1 CPD 255, it was thus held:

It is not the function of this Office to make independent evaluations of proposals to determine which office should have been selected for award. Applied Systems Corporation, B-181696, October 8, 1974, 74-2 CPD 195. The determination of the relative merit of technical proposals is the responsibility of the procuring activity concerned which must bear the major burden of any difficulties encountered because of defective analysis. UCE, Incorporated, B-186668, September 16, 1976, 76-2 CPD 240, and cases cited therein. Therefore, the procuring activity's determination will ordinarily be accepted by our Office unless it is clearly shown to be unreasonable. METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44; Human Resources Company, B-187153, November 30, 1976, 76-2 CPD 459....

Furthermore, in light of the RFP's award criteria, we cannot object to the selection of a higher priced but technically

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superior offer. See Shapell Government Housing, Inc. et al., 55 Comp. Gen. 839 (1976), 76-1 CPD 161; Bell Aerospace Company, 55 Comp. Gen. 244 (1975), 75-2.

Haworth has not submitted any evidence which would cast doubt on the soundness of the Government's judgment in selecting a competitor's product over theirs. Accordingly, the Government's decision should be sustained.

QUALIFICATIONS OF CIA TECHNICAL PERSONNEL: Haworth has objected to the qualifications of Allied Maintenance Company to serve as a Government consultant. This objection must fail for two reasons. First, the objections is untimely. All bidders were advised of Allied's involvement by 14 May 1984, in Amendment No. 1 to the Request for Proposal (RFP). No objections were registered at that time, nor were any registered by 23 May 1984, when Amendment No. 2 was issued, nor by 6 June 1984, when Amendment No. 3 was issued, nor by 20 July 1984, when the contract was awarded to American Seating. Haworth first protested the involvement of Allied Maintenance in its bid protest of 10 August 1984, thus rendering their protest untimely. The rule is stated at 4 CFR 21.2(B)(1):

Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation.

In Precision Environments, Inc., B-198418, April 29, 1980, 80-1 CPD 306, the bid protest was dismissed based on this consideration.

With respect to the second allegation, our Bid Protest Procedures require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. Since the allegation involves an alleged impropriety in the solicitation which was apparent prior to bid opening, it should have been raised prior to that date. The protest, however, was not received in our Office until after bid

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opening. Consequently, this allegation is untimely filed and not for consideration. Picker Corporation; Ohio-Nuclear, Inc., B-192565, January 19, 1979, 79-1 CPD 31.

In the present case, the bid protest was not filed until after the RFP had been amended several times and the contract awarded, rendering the protest singularly untimely. See also Security Assistance Forces and Equipment International, Inc., B-195196, July 10, 1980, 80-2 CPD 24; Colorado Research and Prediction Laboratory, Inc., B-199755, March 5, 1981, 81-1 CPD 170; and A.R.&S. Enterprises, Inc., B-197303, 80-2 CPD 17.

Haworth's objection to the competency of Allied Maintenance Company as a consultant is also inappropriate for substantive reasons. Simply stated, the selection of evaluators and consultants is left to the discretion of the contracting agency. As stated in Harris, supra:

[I]n general we believe that the selection of technical proposal evaluators is a matter within the discretion of the procuring activities and, absent allegations of fraud, bad faith, or conflict of interest, is not a matter appropriate for review and decision by this Office.

The Legat decision, supra, also spoke to the same issue.

In this regard, we have indicated that, in general, we will not become involved in appraising the qualifications of contracting agencies' technical personnel.

The rationale for this policy is described in Emventions, Inc. - Request for Reconsideration, B-183216, November 28, 1975, 75-2 CPD 354.

As to Emventions' objection to the qualifications of the EPA evaluator, our Office has no intention of appraising the qualifications of technical personnel of contracting agencies. We have consistently held that such officials are familiar with the Government's actual needs and are in the best position to make and evaluate the appropriate requirements and conditions. Cf. Particle Data, Inc. et al., B-178718, B-179762, May 15, 1974, 74-1 CPD 257; Manufacturing Data Systems, Incorporated, B-180586, B-180608, January 6, 1975, 75-1 CPD 6.

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In the present circumstance, Allied Maintenance Company is not even an "evaluator," but merely a consultant to the evaluators. This being the case, the matter is inappropriate for review by the General Accounting Office.

DISCLOSURE OF EVALUATION SCORING DURING BRIEFING. The final point raised by Haworth as grounds for their bid protest is CIA's decision not to disclose the evaluation scores and the relative merits of the competitors during debriefing sessions. The contracting officer's decision was based solely on the requirements of the Defense Acquisition Regulation under which this negotiation was conducted. DAR 3-508.4(c) states that the information sought by Haworth "shall not" be provided. The intent is clear.

(c) It is essential that debriefings be conducted in a scrupulously fair, objective and impartial manner. Debriefing information given offerors shall be factual and consistent with the evaluation. While offerors should be informed of the areas in which their technical or management proposals were weak or deficient, point-by-point comparisons with the technical or management proposals of the other offerors shall not be made. Furthermore, debriefings shall not reveal:...(iv) the relative merits or technical standing of competitors or the evaluation scoring. (Emphasis added.)

The DAR is being replaced by the Federal Acquisition Regulation (FAR), and FAR 15.1004(b) contains an almost identical prohibition.

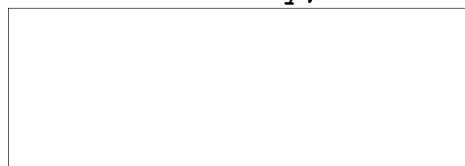
(b) Debriefing information shall include the Government's evaluation of the significant weak or deficient factors in the proposal; however, point-by-point comparisons with other offerors' proposals shall not be made. Debriefing shall not reveal the relative merits or technical standing of competitors or the evaluation scoring. (Emphasis added.)

The contracting officer declined to provide the requested information to Haworth officials based on this regulatory prohibition and the claims by American Seating Company that the requested information is proprietary.

Seymour Efros, Esquire

on the basis of the foregoing, I would respectfully submit that the bid protest of Haworth, Incorporated should be denied.

Sincerely,

A rectangular box with a thin black border, used to redact the signature of the Contracting Officer.

Contracting Officer

STAT

Attachments:

- A. Chronology
- B. Bid Protest
- C. Notification to American Seating
- D. Response to Protest to Contracting Officer
- E. Evaluation Memorandum
- F. Request for Best and Final Offer
- G. RFP with Amendments
- H. Bid Package - Haworth
- I. Bid Package - American Seating

CHRONOLOGY

15 and 26 March 1984	The CIA Procurement Division. Office of Logistics, received information concerning the National Photographic Interpretation Center (NPIC) requirement for systems furniture. Initial Planning meeting was conducted. Gave COTR'S the GSA and DIA Bid Packages as exemplars.
20 March 1984	Received GSA approval to purchase 760 work stations. In accordance with Temp. Reg. FPMR E-76.
26 March - 10 April 1984	Preparation of Technical portion of the Request for Proposal. (RFP).
11 - 12 April 1984	Procurement Division reviewed technical proposal for restrictive specifications. Made suggestions for changes and gave a schedule of events to be incorporated.
17 April 1984	Issued RFP 84A-291 to seven potential bidders. The following list names the vendors suggested to the CIA as being capable of handling this size project.

Bidders List for RFP 84A-291

Haworth, Inc.
1025 Vermont Avenue N.W.
Room 1020
Washington, D.C. 20005

Herman Miller
1800 M Street N.W.
Washington, D.C. 20036

Commercial Office Environments (Steelcase)
9760 George Palmer Highway
Lanham, Maryland 20706-1886

Westinghouse System
300 D Street N.W.
Suite 719
Washington, D.C. 20024

G. F. Furniture Systems
300 D Street S.W. Suite 710
Washington, D.C. 20024

American Seating
901 Broadway N.W.
Grand Rapids, Michigan 49504

Shaw Walker
300 D Street S.W. Suite 820
Washington, D.C. 20024

26 April 1984

Received no bid notification from Shaw Walker. No reason was given.

1 May 1984

Received telephonic notification from G. F. Furniture Systems stating that they were not bidding on this requirement. No reason given.

3 May 1984

A bidder's conference was held at NPIC for all interested bidders. All questions received prior to the conference were read along with the answers. The times for the technical presentations were drawn at random. The meeting was opened to questions and a tour was conducted to show the bidders the type of raised flooring being used.

11 May 1984

Received notification that Westinghouse was not bidding because they lacked a duplex receptacle.

14 May 1984

Amendment Number 1 was issued to all bidders initially contacted. The Amendment incorporated all questions and answers, changes discussed, additional lighting specification, and changing of the consultant from Ellerbe to Allied Maintenance Company.

18 May 1984

Received additional questions from Herman Miller concerning lighting and electrical specifications. Consultations held with COTR.

23 May 1984	Issued Amendment Number 2, restating that electrical specifications were stated correctly and relaying the lighting dimensions. All vendors contacted by phone for questions and answers.
30 May 1984	Received call from Haworth concerning how many workstations should be set up for the presentations.
30 - 31 May 1984	Contacted all vendors and left option of showing one or two workstations. If they showed one, they had to reconfigure it to a different type of station requested. Also called Haworth's references.
1 June 1984	Received bid packages from all vendors. In addition, received from Herman Miller a protest to the contracting officer concerning the electrical specifications and the lighting dimensions.
4 June 1984	In meeting conducted with NPIC electrical engineer, COTR and contract negotiator, discovered that the electrical specifications were in violation of the 1984 National Electric Codes. Lighting requirements also discussed.
6 June 1984	Amendment Number 3 issued to correct the electrical specifications and drop the dimensions of the lighting fixtures. An additional week was allowed for all bidders to review proposals. To insure no changes were required, deadline

of 13 June 1984 set. All bidders advised by phone and informed that technical presentations would continue.

6 June 1984 The references submitted by Herman Miller, Steelcase, and American Seating were contacted. Summaries of all references' comments submitted to evaluation panel.

7 - 8 June 1984 Mock-up presentations conducted at NPIC for the evaluation team.

11 June 1984 Received letter from Herman Miller withdrawing its protest and thanking CIA for its quick response.

11 - 15 June 1984 Evaluation team conducted meeting and report written for the Contracting Officer.

13 June 1984 No changes in proposals submitted.

15 June 1984 Report submitted to Contracting Officer. Technical evaluation resulted in suggested award to American Seating.

15 - 26 June 1984 Preparation of procurement action for review by Agency Contract Review Board (ACRB).

29 June 1984 Received notification of protest to the General Accounting Office (GAO) (case No. B-215638) by Herman Miller. Protest concerned the Agency affording the bidders a best and final offer.

2 July 1984 Requested best and final offers from all bidders still in competition. Due date of 13 July 1984 was established.

6 July 1984	Letter sent by CIA to GAO stating that best and final offers had been requested
13 July 1984	Best and final offers received and reviewed by contracting officer. American Seating emerged as the successful bidder in the total evaluation.
17 July 1984	Procurement action reviewed by the ACRB. Board approved selection.
20 July 1984	Award of contract made to American Seating both telephonically and in writing.
20 July 1984	Received letter from Herman Miller withdrawing earlier protest concerning best and final offers. Notified unsuccessful bidders in writing and by telephone. Also scheduled debriefings for unsuccessful bidders and successful bidder.
31 July 1984	Debriefings conducted for Commercial Office Environments (Steelcase) and Haworth. Discussed strengths and weaknesses of proposals as evaluated against our requirements for all bidders.
1 August 1984	Debriefing conducted for American Seating. Received protest by Haworth dated 31 July 1984 and sent to the Contracting Officer.

3 August 1984	Letter sent to Haworth by CIA answering protest to the contracting officer and denying the protest, based on current regulatory guidance in DAR 3-508.4 and FAR 15.1002(b).
3 August 1984	Debriefing conducted for Herman Miller.
14 August 1984	Received courtesy copy of Haworth's protest to the GAO from Haworth.
15 August 1984	Received GAO official notification of protest against award of CIA Contract 84A930700-000.
16 August 1984	Notification of Protest sent to American Seating.

Seymour Efros, Esquire

Distribution:

- Orig - Addressee w/Atts
 - 1 - Haworth, Inc. w/o Atts
 - 1 - DDA w/o Atts
 - 1 - OLL w/o Atts
 - 1 - ER w/o Atts
 - 1 - L&PLD/OGC w/o Atts
 - 1 - D/OL w/o Atts
 - 1 - DC/PMS/OL w/o Atts
 - 1 - C/PD/OL w/o Atts
 - 1 - P&SCB/PD/OL Official w/Atts
 - 1 - P&SCB/PD/OL Chrono w/o Atts

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

Executive Registry

84-6068

DD/A Registry

84-1029/9

OFFICE OF GENERAL COUNSEL

AUG 14 1984

B- 215638.2

Mr. William J. Casey
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Casey:

Re: Procurement Document: 84A-291

Agency Contact:

STAT

Issuing Activity: CIA, Washington, D.C.

Your representative identified above has been notified of the enclosed communication regarding the captioned procurement. Pursuant to applicable procurement regulations, we request that the parties to the procurement be notified of the protest, furnished with copies of the protest and instructed to communicate directly with GAO. We also request that a documented report responsive to the protest be furnished our Office with a copy to the protester and other interested parties. Unless we are advised to the contrary, we expect to receive the report within 25 working days.

We will forward subsequent correspondence pertaining to this protest directly to your representative.

Sincerely yours,

Seymour Efros
Associate General Counsel

Enclosure

cc: Haworth, Inc.
1025 Vermont Ave., N.W., Suite 1020
Washington, D.C. 20005

Attn: 

STAT

84 AUG 10 P 1: 40

August 10, 1984

B-215638.2

General Counsel
General Accounting Office
Washington, DC 20548
Attn: Bid Protest Control Unit

RE: Central Intelligence Agency
RFP 84A-291, Systems Furniture
Bid Protest After Award

Haworth, Inc. hereby protests the award of the above referenced solicitation to American Seating Company.

As a basis of our protest, we point to the following facts:

1. The unweighted price offer by Haworth (\$2,027,513) is \$219,062 (9.75%) under American Seating's unweighted price of \$2,246,575.
2. For the award to be made to American Seating, the technical merits of their product must have been so decisively superior to Haworth's that the resultant weighting factors made up for the 9.75% price differential. We maintain that such results and conclusions are not supportable by and inconsistent with national buying trends and that General Services Administration (GSA) test data will bear at this claim.
3. CIA retained a firm called "Allied Maintenance" as a "consultant" during the product evaluation, to "serve in a logistical input capacity". While CIA claims that Allied Maintenance has no vote during the evaluation process, we feel that Allied Maintenance may have been in a position to influence CIA's complete objectivity before or after the evaluation process was completed. Allied Maintenance has never installed, moved, or otherwise worked with the Haworth product line and we question their qualifications to render meaningful "logistical input" to CIA in matters relating to our product lines.

While we do not refute CIA's legitimate application of pertinent selections of Federal and Defense Acquisition Regulations, we do protest the total secrecy in which the evaluation scores are

being kept. CIA refuses to give us our own scores, not to mention the scores of the awardee. This definitely breaks with established procedures and precedents.

Haworth hereby requests a ruling on the merits of this protest by the Comptroller General.

Respectfully,

HAWORTH, INC.
MID-ATLANTIC DIVISION

STAT

Sr. Market Manager

cc: CIA
Procurement Division
Washington, DC 20505
Attn:

STAT

GHS/lde

July 31, 1984

[redacted] Contracting Officer
Procurement Division
Central Intelligence Agency
Washington, DC 20505

STAT

SUBJECT: RFP 84A-291, Systems Furniture

Dear [redacted]

STAT

Haworth, Inc. hereby protests the award of the above-referenced solicitation to American Seating Company.

At a "debriefing" session conducted on July 31, 1984 we were told how our proposal and our product offering met, exceeded, or fell short of CIA's requirements. As a result, our protest is based on the following:

1. CIA declines to reveal the "technical score" which was applied as a weighting factor to determine a "weighted price". Not only does CIA decline to reveal American Seating's technical score, but you decline to reveal our own, as well.
2. The unweighted price offered by Haworth (\$2,027,513) is (\$219,062 (or 9.75%) under American Seating's unweighted price of \$2,246,575. Considering only these two manufacturers, American Seating's product must have proven so clearly and decisively superior to Haworth that the weighted score more than made up for the 9.75% unweighted price differential.

Haworth, Inc. maintains that such results and conclusions are unsupported by and inconsistent with national buying trends.

We hereby request that the unweighted prices, weighted prices, and technical scores be reviewed for thoroughness and objectivity, that all such prices and scores be publicly announced, that the award to American Seating Company be withdrawn, and that this project be re-advertised for bid.

Respectfully,

HAWORTH, INC.
MID-ATLANTIC DIVISION

STAT

Sr. Market Manager

cc:

STAT

GHS/lde